

No. 10,550

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THOMAS H. WINGATE, as Receiver in Equity
for Pacific Empire Holdings, Incorporated (a corporation of the State of
Delaware),

Appellant,

VS.

PETER BERCUT, HENRI BERCUT, M. MAFFEI
and L. R. ARNOLD,

Appellees.

BRIEF FOR APPELLEES M. MAFFEI AND L. R. ARNOLD.

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M. Maffei and L. R. Arnold.

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Appellant contends that the evidence supports *either* the First Count, on the theory that the Appellees Henri Bercut and Peter Bercut are trustees of the shares in question for Appellant; *or*, the Second Count that title to the shares of stock never passed at all, remained and at all times have been and now are in Appellant; *or*, the Third Count on the theory that various Appellees, including Appellees M. Maffei and L. R. Arnold converted said shares *to their own* use and benefit and so owe their value.

With counsel's authorities, we have no quarrel.

There is, however, no shred of evidence to support any possible theory claim upon which Appellees, M. Maffei and L. R. Arnold, can be held liable for either an accounting, a trust or a conversion of the stock, and no part of the exhaustive analysis of the evidence by Appellant has shown otherwise.

The evidence shows that there was a transfer of the stock to Peter Bercut and Henri Bercut and no one else and that no one else of Appellees has or ever had any possible interest in or control over the stock or received any consideration therefor. The failure of Appellant to demand the stock or even address the "suit" letter to these Appellees shows that no serious claim was ever considered against these Appellees until they were joined as Appellees.

If either of Appellant's contentions, to-wit: that title never passed from the Pacific Empire Holdings, Inc., or that Henri Bercut and Peter Bercut are holding the shares as trustees for Appellant, are correct, then certainly the Appellees, M. Maffei and L. R. Arnold, are in no way liable to Appellant herein. They merely and at most performed a useless and idle and possibly a careless act in signing an illegal and void document and if no title to the stock could pass thereby, then while Appellant may have his rights against the person who took physical possession of the stock, certainly he can have no rights or claims whatsoever under the present form of action against these Appellees, who did not take the stock and do not assert any claim therein.

The evidence shows that the activities of said Appellees Maffei and Arnold with the Pacific Empire Holdings, Inc., ceased after the transfer of the stock; that they were ousted by the controlling faction just as any mere employees; that they own no interest in the stock and have derived utterly no benefit from the purported sale of the same.

In conclusion, if the sale is a valid one, then Appellant should have no judgment against these Appellees. If the sale is a void one, if there is a trust or a conversion, Appellant still should have no judgment against these Appellees because they have not nor have they ever had any right or title in, over or to said shares or the profits and income therefrom.

It is respectfully submitted that as to Appellees, M. Maffei and L. R. Arnold, the appeal should be dismissed and that these Appellees have their costs.

Dated, San Francisco,
February 4, 1944.

J. A. PARDINI,
ELDA GRANELLI,
Attorneys for Appellees
M. Maffei and L. R. Arnold.

